

ORIGINAL

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Attorneys for Defendant
 7-ELEVEN, INC.

**UNITED STATES DISTRICT COURT
 FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

KIMBERLY ALEKSICK,
 individually and on behalf of other
 members of the general public
 similarly situated,

Plaintiffs,

v.

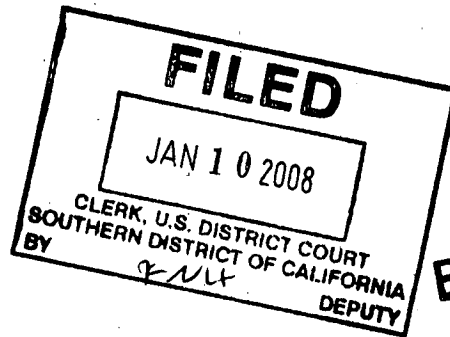
7-ELEVEN, INC., a Texas
 Corporation, MICHAEL TUCKER;
 an individual; and DOES 1-50,
 Inclusive,

Defendants.

CASE NO. '08 CV 0059 J WMC

**PETITION AND NOTICE OF
 REMOVAL OF CIVIL ACTION
 UNDER 28 U.S.C. §§ 1332, 1441 AND
 1446**

Defendant 7-Eleven, Inc. ("7-Eleven") hereby gives notice pursuant to 28
 U.S.C. §§ 1332, 1441 and 1446 of the removal to this Court of the action



BY FAX

1 commenced against it in the Superior Court of the State of California, County of
2 Imperial, styled Kimberly Aleksick v. 7-Eleven, Inc., et al. (ECU03615) ("State
3 Court Action"). The following facts support this removal:

4 **PROCEDURAL HISTORY**

5 1. On or about April 16, 2007, Plaintiff Kimberly Aleksick ("Plaintiff")
6 filed a Complaint against 7-Eleven and its franchisee Michael Tucker in the
7 Superior Court for the State of California, County of Imperial. Attached hereto as
8 Exhibit "A" is a true and correct copy of the Complaint, Civil Case Cover Sheet
9 and Summons.

10 2. On June 1, 2007, 7-Eleven filed its Answer to the Complaint.
11 Attached hereto as Exhibit "B" is a true and correct copy of 7-Eleven's Answer.

12 3. The Superior Court noticed a Case Management Conference for
13 August 14, 2007. Attached hereto as Exhibit "C" is a true and correct copy of the
14 Court's Notice.

15 4. The Court continued the Case Management Conference to August 23,
16 2007 in an Order dated August 8, 2007. Attached hereto as Exhibit "D" is a true
17 and correct copy of the Court's Order.

18 5. On July 11, 2007, 7-Eleven filed a *Pro Hac Vice* Application for the
19 admission of Eric A. Welter. Attached hereto as Exhibit "E" is a true and correct
20 copy of the Application.

21 6. On July 17, 2007, 7-Eleven filed a Case Management Statement.
22 Attached hereto as Exhibit "F" is a true and correct copy of the Statement.

23 7. On July 18, 2007, Plaintiff's counsel filed a Notice of Plaintiff's
24 Counsel's Unavailability to Appear at the Case Management Conference and
25 Request to Continue the CMC, along with a Proposed Order granting the Request.
26 Attached hereto as Exhibit "G" is a true and correct copy of the Notice, Request,
27 and Proposed Order.
28

1 8. On July 19, 2007, Defendant Michael Tucker filed an Answer to
2 Plaintiff's Complaint. Attached hereto as Exhibit "H" is a true and correct copy of
3 Mr. Tucker's Answer.

4 9. On July 19, 2007, Plaintiff filed a Notice of No Opposition to the *Pro*
5 *Hac Vice* Application for Eric A. Welter. Attached hereto as Exhibit "I" is a true
6 and correct copy of the Notice.

7 10. On July 25, 2007, Plaintiff filed a Case Management Statement for the
8 Case Management Conference on August 14, 2007. Attached hereto as Exhibit "J"
9 is a true and correct copy of the Statement.

10 11. On July 31, 2007, Defendant Michael Tucker filed a Case
11 Management Statement for the Case Management Conference on August 14, 2007.
12 Attached hereto as Exhibit "K" is a true and correct copy of the Statement.

13 12. On August 1, 2007, the Court issued a Notice of Hearing for the *Pro*
14 *Hac Vice* Application of Eric A. Welter. Attached hereto as Exhibit "L" is a true
15 and correct copy of the Notice of Hearing.

16 13. On August 8, 2007, 7-Eleven filed a Notice of Intent to Appear at the
17 Case Management Conference by Telephone. Attached hereto as Exhibit "M" is a
18 true and correct copy of the Notice.

19 14. On August 8, 2007, the Court issued an Order continuing the Case
20 Management Conference to August 23, 2007. Attached hereto as Exhibit "N" is a
21 true and correct copy of the Court's Order.

22 15. On August 23, 2007, the Court issued a Case Management Order
23 setting a Case Management Conference for September 25, 2007. Attached hereto
24 as Exhibit "O" is a true and correct copy of the Court's Case Management Order.

25 16. 7-Eleven provided notice of the Class Action Case Conference to all
26 Parties. Attached hereto as Exhibit "P" is a true and correct copy of the Notice of
27 Class Action Case Conference.
28

1 17. On September 6, 2007, attorneys for Michael Tucker provided a
2 Notice of Change of Firm Name. Attached hereto as Exhibit "Q" is a true and
3 correct copy of the Notice of Change of Firm Name.

4 18. On September 12, 2007, 7-Eleven filed a Case Management
5 Statement. Attached hereto as Exhibit "R" is a true and correct copy of the Case
6 Management Statement.

7 19. On September 12, 2007, the Court granted Eric A. Welter's *Pro Hac*
8 *Vice* Application. Attached hereto as Exhibit "S" is a true and correct copy of the
9 Court's Order.

10 20. On September 25, 2007, the Court issued a Case Management Order
11 setting a Case Management Conference for December 21, 2007. Attached hereto
12 as Exhibit "T" is a true and correct copy of the Court's Order.

13 21. On December 4, 2007, 7-Eleven filed a Case Management Statement
14 and a Notice of Intent to Appear Telephonically. Attached hereto as Exhibit "U" is
15 a true and correct copy of the Case Management Statement and Notice.

16 22. On December 5, 2007, Defendant Michael Tucker filed a Case
17 Management Statement. Attached hereto as Exhibit "V" is a true and correct copy
18 of the Statement.

19 23. On December 17, 2007, Plaintiff filed an *Ex Parte* Application for an
20 Order Compelling "Pioneer/Belaire" Notice, or in the Alternative, For An Order
21 Shortening Time To Hear Plaintiff's Request for an Order Compelling
22 "Pioneer/Belaire" Notice. Attached hereto as Exhibit "W" is a true and correct
23 copy of the Application.

24 24. On December 13, 2007, Plaintiff's counsel faxed to counsel for 7-
25 Eleven Plaintiff's First Amended Complaint ("FAC"). Attached hereto as Exhibit
26 "X" is a true and correct copy of the FAC.

27 25. On January 9, 2008, 7-Eleven timely filed an answer to Plaintiff's
28 FAC. Attached hereto as Exhibit "Y" is a true and correct copy of the Answer.

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1 franchisee's employees nor is it an agent of the franchisee. Singh v. 7-Eleven, Inc.,
2 2007 WL 715488 (N.D.Cal. 2007); Cislaw v. Southland Corp., 4 Cal.App.4th 1284
3 (1992); Wickham v. Southland Corp., 168 Cal.App.3d 49 (1985); see also
4 Chelkova v. Southland Corp., 771 N.E.2d 1100 (Ill. App. 2002); Daves v.
5 Southland Corp., 2000 WL 60199 (Wash. App. 2000); Hatcher v. Augustus, 956
6 F.Supp. 387 (E.D.N.Y. 1997). Indeed, there is a paucity of reported decisions
7 nationwide holding franchisors liable for the wage and hour violations of its
8 franchisee. See, e.g., Howell v. Chick-Fil-A, Inc., 1993 WL 603296, *2 n.2
9 (N.D.Fla. 1993) (noting in FLSA case brought by employee of franchisee against
10 franchisor that that court has "not discovered a reported case in which a franchisor
11 has been held liable to an employee of an independent contractor."). Thus, given
12 that the original Complaint involved at most two 7-Eleven stores operated by
13 franchisee Michael Tucker, the original Complaint did not satisfy the jurisdictional
14 limits under the CAFA.

15 31. On December 17, 2007, 7-Eleven received Plaintiff's First Amended
16 Complaint by facsimile.

17 32. The First Amended Complaint is a substantially new complaint. It
18 includes new claims against 7-Eleven that are fundamentally different from those
19 in the original Complaint. The new claims include negligence, negligence per se,
20 and negligent interference with prospective economic advantage, and a claim for
21 penalties under California Labor Code section 2699.

22 33. Plaintiff's "negligence" claims seek to impose direct liability on
23 7-Eleven for its practices in providing payroll services to its franchisees. Thus, the
24 "negligence" claims do not depend on a finding that 7-Eleven was Plaintiff's
25 "employer." These claims, for the first time, potentially implicate all of 7-Eleven's
26 approximately 1,200 franchise stores in California.

27 34. Removal here is governed by 28 U.S.C. § 1446(b). Section 1446(b)
28 provides, in pertinent part, "[i]f the case stated by the initial pleading is not

1 removable, a notice of removal may be filed within thirty days after receipt by the
2 defendant, through service or otherwise, of a copy of an amended pleading,
3 motion, order or other paper from which it may first be ascertained that the case is
4 one which is or has become removable.”

5 35. The three “negligence” claims asserted directly against 7-Eleven in
6 the First Amended Complaint are not dependent upon 7-Eleven’s status as an
7 “employer.” Rather, the First Amended Complaint asserts a completely new
8 theory of liability directly against 7-Eleven: that 7-Eleven acted negligently in
9 operating its payroll system for its franchisees. (*See, e.g., First Amd. Compl.*
10 ¶¶ 22, 24-25). As discussed in more detail below, the First Amended Complaint is
11 an amended pleading from which it may first be ascertained that the case is
12 removable, and 7-Eleven has filed this removal within thirty (30) days of its
13 receipt.

14 36. The State Court Action is a civil action of which this Court has
15 original jurisdiction under 28 U.S.C. § 1332(d), and is one which may be removed
16 to this Court by 7-Eleven pursuant to 28 U.S.C. § 1441, in that:

- 17 a. 7-Eleven is a corporation incorporated in and under the laws of the
18 State of Texas, and it is and has been at all material times a citizen of
19 that state. 7-Eleven’s corporate headquarters and principal place of
20 business is in Dallas, Texas. 7-Eleven is not a citizen of the State of
21 California. (*See First Amd. Compl.* ¶ 5).
- 22 b. Plaintiff is a resident of the State of California. (*First Amd. Compl.* ¶
23 4).
- 24 c. According to Plaintiff, the potential class consists of 5,000
25 individuals. (*First Amd. Comp.* ¶ 11). Assuming that the putative
26 class now includes the employees of 7-Eleven’s approximately 1,200
27 franchise stores in California (which the original Complaint could not
28 have), 7-Eleven’s records indicate there were approximately 19,000

1 individuals employed by its franchisees in California for some period
2 of time during 2006.

3 d. The matter in controversy exceeds the sum or value of \$5,000,000,
4 exclusive of interest and costs. To determine the amount in
5 controversy, the Court "must assume that the allegations in the
6 complaint are true." Forever Living Prods. U.S. Inc. v. Geyman, 471
7 F.Supp.2d 980, 986 (D.Ariz. 2006); Kenneth Rothschild Trust v.
8 Morgan Stanley Dean Witter, 199 F.Supp.2d 993, 1001 (C.D.Cal.
9 2002).

10 (a) Plaintiff alleges that the potential class consists of 5,000
11 individuals, "100%" of whom were denied meal and rest
12 breaks and not provided the mandated payment required by
13 law. (*FAC*, ¶¶ 11, 14A).

14 1. Under Plaintiff's sixth claim for relief under California
15 Labor Code section 2699, an employer is liable for a
16 \$100 penalty for the initial violation and \$200 for each
17 subsequent violation. The relevant limitations period for
18 this claim is one year. Cal. Code Civ. Proc. § 340.

19 Assuming that Plaintiff's allegation that 100% of the
20 class was denied the meal and rest breaks during each
21 work week during the one year limitations period, the
22 potential damages on this claim amounts to \$51,500,000
23 $(5,000 * \$100 + 5,000 * \$200 * 51)$.

24 2. The minimum wage in California during a substantial
25 part of the potential class period here was \$6.75. The
26 relevant limitations period on Plaintiff's section 17200
27 restitution claim is four years. California Bus. & Prof.
28 Code § 17208. Based on Plaintiff's allegations that

1 “100%” of the employees in California were deprived of
2 meal and rest breaks and not paid the hour of pay due
3 each week due to 7-Eleven’s payroll system, the potential
4 damages on that claim would amount to \$7,020,000
5 (\$6.75 a week * 52 weeks * 5,000 putative class
6 members* 4 years).

7 (b) 7-Eleven’s records indicate that there were approximately
8 19,000 individuals employed by its 1,215 franchise stores
9 in California in 2006 and that the average hourly wage of
10 those individuals as of February 2007 was \$8.48.

11 1. Looking again at Plaintiff’s claim under California Labor
12 Code § 2699, assuming only two violations per putative
13 plaintiff during the one-year limitations period, the
14 potential damages on this claim alone would amount to
15 \$5,700,000 (19,000 * 300).

16 2. Looking at Plaintiff’s meal and rest break claim,
17 assuming that the putative class members were not paid
18 the statutorily required one-hour of pay for each week
19 during the year prior to the commencement of this case,
20 the potential damages on this claim would amount to
21 \$8,378,240 (19,000 * 52 * 8.48).

22 e. 7-Eleven has established the elements necessary for removal under the
23 CAFA, 28 U.S.C. § 1332(d).

24 37. The United States District Court for the Southern District of
25 California, San Diego Division, is the District Court of the United States and the
26 Division thereof embracing the place where the State Court Action is pending prior
27 to removal.
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INDEX OF EXHIBITS*Alesick vs. 7-Eleven, Inc.*

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| 1 | |
| 2 | |
| 3 | |
| 4 | Exhibit "A": Summons and Complaint and Civil Cover Sheet |
| 5 | Exhibit "B": Defendant's Answer to Complaint |
| 6 | Exhibit "C": Court's Notice of CMC on August 14, 2007 |
| 7 | Exhibit "D": Court's Order to continue Case Management Conference |
| 8 | Exhibit "E": <i>Pro Hac Vice</i> Application for admission of Eric A. Welter |
| 9 | Exhibit "F": Case Management Statement (7-Eleven) |
| 10 | Exhibit "G": Notice of Plaintiff's Counsel's Unavailability to Appear at |
| 11 | CMC, Request Continue CMC, and [Proposed] Order |
| 12 | Exhibit "H": Defendant Michael Tucker's Answer to Complaint |
| 13 | Exhibit "I": Notice of No Opposition to <i>Pro Hac Vice</i> Application |
| 14 | Exhibit "J": Case Management Statement filed by Plaintiff (8/14/07) |
| 15 | Exhibit "K": Case Management Statement filed by Michael Tucker (8/14/07) |
| 16 | Exhibit "L": Court's Notice of Hearing for the <i>Pro Hac Vice</i> Application |
| 17 | Exhibit "M": Notice of Intent to Appear at the CMC by Telephone (7-Eleven) |
| 18 | Exhibit "N": Court's Order Continuing CMC to August 23, 2007 |
| 19 | Exhibit "O": Court's Case Management Order for September 25, 2007 |
| 20 | Exhibit "P": Notice of Class Action Case Conference (7-Eleven) |
| 21 | Exhibit "Q": Notice of Change of Firm Name (Michael Tucker's Attorneys) |
| 22 | Exhibit "R": Case Management Statement (7-Eleven) |
| 23 | Exhibit "S": Court's Order Granting <i>Pro Hac Vice</i> Application |
| 24 | Exhibit "T": Case Management Order setting CMC for December 21, 2007 |
| 25 | Exhibit "U": Case Management Statement and Notice to Appear |
| 26 | Telephonically at CMC (7-11) |
| 27 | |
| 28 | Exhibit "V": Case Management Statement (Michael Tucker) |

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

1 Exhibit "W": Ex Parte Application for an Order (Plaintiff)
2 Exhibit "X": First Amended Complaint (Plaintiff)
3 Exhibit "Y": Answer to First Amended Complaint (7-Eleven)
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EXHIBIT A

F 4116

CM-010

| | | |
|---|--|---|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): William B. Sullivan [CSB No. 171637] Eric J. Palmer [CSB No. 231207] SULLIVAN & CHRISTIAN LLP 2330 Third Ave., San Diego, California 92101 TELEPHONE NO.: (619) 702-6760 FAX NO.: (619) 702-6761 ATTORNEY FOR (Name): Plaintiff KIMBERLY ALEKSICK | | FOR COURT USE ONLY FILED APR 18 2007 SUPERIOR COURT IMPERIAL COUNTY, CA JOSE O. GARCIA, CLERK BY: [Signature] DEPUTY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL STREET ADDRESS: 939 Main Street MAILING ADDRESS: 939 Main Street CITY AND ZIP CODE: El Centro, California 92243 BRANCH NAME: | | |
| CASE NAME: ALEKSICK v. 7-ELEVEN, INC., et al. | | |
| CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) | | Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) |
| | | CASE NUMBER: ECU032015 JUDGE: 9 DEPT: J. J. [Signature] |

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

| | | |
|---|--|---|
| Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input checked="" type="checkbox"/> Other employment (15) | Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|---|

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): Two (2)
5. This case ☒ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)
- Date: April 16, 2007

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

 Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. January 1, 2007)

CIVIL CASE COVER SHEET

 American LegalNet, Inc.
 www.FormsWorship.com

 Cal. Rules of Court, rules 3.220, 3.400-3.403;
 STANISLAVUS OF JUDICIAL ADMINISTRATION, § 19
 www.courtinfo.ca.gov

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

7-ELEVEN, INC., a Texas Corporation; and DOES 1 through 50
Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

KIMBERLY ALEKSICK, individually and on behalf of other members
of the general public similarly situated.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

APR 16 2007

SUPERIOR COURT
IMPERIAL COUNTY, CA
JOSE ORTEGA, CLERK
MONICA PEREZ, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pide al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia. Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California
939 Main Street
El Centro, California 92243

CASE NUMBER:
(Número del Caso): EC003615

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
William B. Sullivan, SULLIVAN & CHRISTIANI LLP
2330 Third Ave., San Diego, California 92101

DATE:
(Fecha)

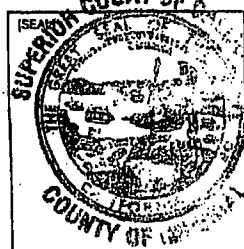
APR 16 2007

JOSE O. SULLIVAN, Clerk, by _____
(Secretario)

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): 7-ELEVEN, Inc.

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):
4. ☐ by personal delivery on (date):

SUMMONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

7-ELEVEN, INC., a Texas Corporation; and DOES 1 through 50
Inclusive.

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):

KIMBERLY ALEKSICK, individually and on behalf of other members
of the general public similarly situated.

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
APR 16 2007

SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLEN, CLERK
BY MONICA PEREZ
DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California
939 Main Street
El Centro, California 92243

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

William B. Sullivan, SULLIVAN & CHRISTIANI LLP
2330 Third Ave., San Diego, California 92101

CASE NUMBER:
(Número del Caso):

ECU03615

DATE:
(Fecha)

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): 7-ELEVEN, Inc., a Texas Corporation

- under: ☒ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☒ by personal delivery on (date): 5/3/07

Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. January 1, 2004)

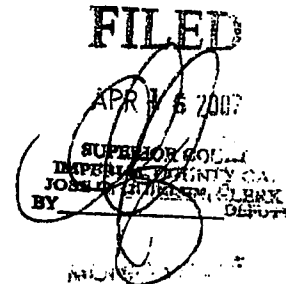
SUMMONS

Page 1 of 1
Code of Civil Procedure §§ 412.20, 468
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F 4/16
2 4/16

1 William B. Sullivan [CSB No. 171637]
 2 Eric J. Palmer [CSB No. 231207]
 3 **SULLIVAN & CHRISTIANI, LLP**
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 San Diego, California 92101
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5 Attorneys for Plaintiff KIMBERLY ALEKSICK



Assigned for all purposes to Judge
 Joseph H. Harris

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF IMPERIAL**

10 KIMBERLY ALEKSICK, individually and
 11 on behalf of other members of the general
 public similarly situated,

12 Plaintiff,

13 v.

14 7-ELEVEN, INC., a Texas Corporation;
 15 MICHAEL TUCKER, an individual; and
 16 DOES 1-50, Inclusive,

17 Defendants.

CASE NO. **ECU03615**
 (CLASS ACTION)

COMPLAINT FOR:

1. VIOLATION OF LABOR CODE;
 (CLASS ACTION) and
2. VIOLATION OF BUSINESS AND
 PROFESSIONS CODE SECTION
 17200 (CLASS ACTION)

18
 19 COMES NOW Plaintiff KIMBERLY ALEKSICK, (hereinafter "Plaintiff"), and alleges for her
 20 Complaint as follows:

- 21 1. This Court has jurisdiction over this matter in that all parties are residents of the State of
 22 California and the amount in controversy exceeds the statutory minimum limit of this Court. This
 23 class action is brought pursuant to Section 382 of the California Code of Civil Procedure. The
 24 monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of
 25 the Superior Court and will be established according to proof at trial. The monetary damages
 26 sought on behalf of each and every member of the class and as aggregate class damages exceed
 27 those jurisdictional limits as well. However, the claims of individual class members, including
 28 Plaintiff, are under \$75,000.00 jurisdictional threshold for federal court. Furthermore, there is no

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CLASS ACTION COMPLAINT

1 federal question at issue, as Wage and Hour protections and remedies related thereto are based
2 solely on California Law and Statutes, including the Labor Code, Civil Code, Code of Civil
3 Procedure, and Business and Professions Code.

4 2. Venue is proper before this Court in that some or all of the events, acts and happenings as alleged
5 herein occurred within the jurisdiction of the above-entitled court.

6 3. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff's
7 injuries occurred in Imperial County in the State of California.

8 4. At all relevant times herein, Plaintiff KIMBERLY ALEKSICK (Hereinafter "Plaintiff") was and
9 is an individual residing in Imperial County in the State of California.

10 5. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
11 Defendant 7-ELEVEN, INC. (hereinafter "Defendant Employer"), was and is a Texas
12 Corporation doing business in Imperial County in the State of California.

13 6. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein,
14 Defendant MICHAEL TUCKER (hereinafter "TUCKER") was and is residing and doing
15 business in Imperial County in the State of California.

16 7. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named
17 herein as DOES 1 through 50, inclusive. Accordingly, Plaintiff will seek leave of court to amend
18 this Complaint to allege their true names and capacities after the same have been ascertained.

19 8. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
20 Defendants is responsible in some manner for the wrongs and damages as herein alleged, and in
21 so acting was functioning as the agent, servant, partner, and employee of the co-defendants, and
22 in doing the actions mentioned below was acting within the course and scope of his or her
23 authority as such agent, servant, partner, and employee with the permission and consent of the
24 co-defendants. Plaintiff's injuries as herein alleged were proximately caused by said Defendants.
25 Wherever it is alleged herein that any act or omission was done or committed by any specially
26 named Defendant or Defendants, Plaintiff intends thereby to allege and does allege that the same
27 act or omission was also done and committed by each and every Defendant named as a DOE,
28 both separately and in concert or conspiracy with the named Defendant or Defendants.

9. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,

1 including DOES 1 through 50, are, and at all times herein mentioned were, either individuals,
2 sole proprietorships, partnerships, registered professionals, corporations, alter egos, or other legal
3 entities which were licensed to do and/or were doing business in the County of San Diego, State
4 of California at all times relevant to the subject matter of this action.

5 **CLASS ACTION ALLEGATIONS**

- 6 10. As more specifically set forth below, Plaintiff is bringing this action on behalf of an ascertainable
7 class and a well-defined community of interest among the class members. Code of Civil
8 Procedure Section 382; Richmond v. Dart Industries, Inc. (1981) 29 Cal.3d 426, 470.
9 Throughout her employment, Plaintiff and her former co-workers were knowingly denied and/or
10 refused mandated relieved meal and rest periods, in violation of Labor Code Section 512.
11 Defendant Employer and TUCKER ("Defendants") further failed to provide Plaintiff and her
12 former co-workers one hour of pay at their regular rate of pay for each day the meal and rest
13 periods were not provided, in violation of Labor Code Section 226.7, despite such knowledge.
14 Moreover, Plaintiff and other employees of Defendants regularly worked in excess of eight (8)
15 hours a day and/or forty (40) hours a week without receiving appropriate overtime compensation.
16 Further, Plaintiff and other employees of Defendants were required to purchase uniforms using
17 their own monies, in violation of Labor Code section 2802. Additionally, Plaintiff did not
18 receive itemized wage statements ("pay-stubs") which were compliant with the provisions of
19 Labor Code section 226.
- 20 11. Plaintiff brings this action on the grounds that she and other similarly situated employees
21 employed by Defendants were and are improperly denied earned overtime compensation,
22 mandated wages resulting from missed meal and rest periods, improperly required to purchase
23 work uniforms with their own wages, and improperly issued statutorily non-compliant pay-stubs.
24 Sav-On Drug Stores, Inc. v. Superior Court (2004) 34 Cal.4th 319. The class of present and
25 former employees is believed to number approximately five thousand (5000.)
- 26 12. The approximately 5000 member class is ascertainable via their experience as present or past
27 employees of Defendants.
- 28 13. The class members share a community of interest and an injury in fact as Defendants have
violated California compensation laws, thereby depriving the class members of money earned

1 by them.

2 14. This action involves questions of law and fact common to the class in that Plaintiff is bringing
3 this action on behalf of a class of Defendants' current and former employees who were and/or
4 are improperly denied mandated meal and rest periods, overtime compensation, statutorily
5 compliant pay stubs, and were and/or are improperly required to purchase work uniforms with
6 their own wages. The subject matter of this action both as to factual and legal matters is such that
7 there are questions of law and fact common to the class which predominate over questions
8 affecting only individual members, including, among other things the following:

9 A. Statistically, one hundred percent (100%) of the class members were not "authorized and
10 permitted" to take their legally mandated meal and rest periods, and/or were not provided
11 the legally mandated payment for not receiving relieved meal and rest periods. 100% of
12 the class members were required by Defendants to purchase work uniforms using their
13 own wages. 100% of the class members did not receive statutorily compliant pay-stubs
14 during the operative class period.

15 B. The duties and responsibilities of the class members Plaintiff is representing were similar
16 and comparable. Any variations in job activities between the individual class members
17 are legally insignificant to the issues presented by this action since the central facts
18 remain, to wit, Plaintiff and the other class members were improperly denied the
19 mandated meal and rest periods, overtime compensation, pay-stubs, and were improperly
20 required to purchase work uniforms using their own wages.

21 14. The class on whose behalf the action is brought is so numerous that joinder of all parties
22 individually would be impractical. Plaintiff is bringing this action on behalf of approximately
23 5000 current and/or former employees of Defendants who share a common or general interest,
24 and it would be impracticable for those current or former employees to bring the action
25 individually.

26 15. Plaintiff's claims in this action are typical of the class Plaintiff is generally representing. Plaintiff
27 and other members in the class were required and instructed by Defendants to perform work
28 during their mandated meal and rest periods and were not provided the mandated relieved and
off-duty meal and rest breaks. Defendants further failed to provide Plaintiff and other members

1 in her class one hour of pay at their regular rate of pay for each day the meal and rest periods
2 were not provided, in violation of Labor Code Section 226.7. Defendants further failed to pay
3 overtime compensation to Plaintiff and other class members for work performed in excess of 8
4 hours a day and/or 40 hours a week, in violation of Labor Code Section 510. Defendants further
5 failed to provide Plaintiff and other class members statutorily compliant pay-stubs in accordance
6 with Labor Code Section 226. Defendants further required Plaintiff and other class members to
7 purchase work uniforms using their own wages. Plaintiff seeks proper compensation and
8 restitution on behalf of herself and other members in the class for the foregoing irregularities.

9 16. Plaintiff can fairly and adequately protect the interests of all the members of the class she is
10 representing in this action. Plaintiff's experience and knowledge of her former employers' Wage
11 and Hour practices and its policy regarding Meal and Rest periods, Overtime compensation,
12 issuing pay-stubs, and employee uniform purchases, in addition to Plaintiff's familiarity with the
13 job duties of the class members she is representing, entitle her to adequately and fairly represent
14 the class.

15 17. Plaintiff has satisfied the three prong "community of interest" requirement in California Code
16 of Civil Procedure Section 382. Specifically, and as set forth above, (a) this action involves
17 predominant common questions of law or fact in that Plaintiff brings this action on behalf of the
18 approximately 5000 member class who were denied overtime compensation mandated relieved
19 meal and rest periods, and required wages under Labor Code Section 226.7 and Title 8, California
20 Code of Regulations Section 11010(11)(C) also known as Wage Order 1 and therefore, like
21 Plaintiff, were improperly compensated, (b) Plaintiff's claims and damages are typical of the
22 class Plaintiff represents in that, as mentioned above, Plaintiff seeks on behalf of herself and the
23 class members she represents wages for failure to provide them the required meal and rest
24 periods, including required wages under Labor Code Section 226.7 and Title 8, California Code
25 of Regulations Section 11010(11)(C), and (c) Plaintiff's experience and knowledge of her former
26 employer's Wage and Hour practices and its policy regarding meal and rest periods, in addition
27 to Plaintiff's familiarity with the job duties of the class members she is representing, entitle her
28 to adequately and fairly represent the class.

FACTUAL BACKGROUND

18. In or about 2005, Plaintiff commenced working in a position titled by Defendants as "Sales Associate." Plaintiff's employment with Defendants continued until her involuntary termination on February 20, 2007. Throughout her employment with Defendants, Plaintiff performed her job in a capable and competent manner, and was commended for doing so. Throughout her employment with Defendants, both Defendants exercised control over the wages, hours, and/or working conditions of Plaintiff and her fellow employees, and both Defendants possessed the right to terminate Plaintiffs' employment.
19. Plaintiff and other members in her class were required and instructed by Defendants to perform work during their mandated meal and rest periods and therefore were not provided the mandated relieved and off-duty meal and rest breaks, in violation of Labor Code Sections 512 and 226.7 and Title 8, California Code of Regulations Section 11010(11)(C) also known as Wage Order 1. Plaintiff and other members in her class were not provided one hour of pay at their regular rate of pay for each day the meal and rest period was not provided, in violation of Labor Code Section 226.7. Plaintiff and other members in her class were not compensated for work performed in excess of 8 hours and day and/or 40 hours a week. Plaintiff and other members in her class were not provided statutorily compliant itemized wage statements ("pay-stubs".) Plaintiff and other members in her class were required by Defendants to purchase and clean work uniforms using their own wages.

**FIRST CAUSE OF ACTION
Violation of Labor Code - Class Action
(By The Class Against All Defendants)**

20. Plaintiff hereby incorporates by reference paragraphs 1 through 19 above, as though fully set forth herein.
21. California Labor Code § 226.7(a) states that "No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."
22. Under applicable state law, employees who work more than five (5) hours a day are entitled to a meal period of at least thirty (30) minutes, and a second meal period of at least thirty (30)

1 minutes if they work more than ten (10) hours in a day. (Labor Code § 512(a).)

2 23. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall
3 be considered an "on duty" meal period and counted as time worked. Title 8, California Code
4 of Regulations Section 11010(11)(C) also known as Wage Order 1.

5 24. An employer who fails to provide meal or rest periods as required by an applicable Wage Order
6 must pay the employee one additional hour of pay at the employee's regular rate of pay for each
7 workday that the meal or rest period was not provided. (Labor Code § 226.7(b); IWC Wage
8 Orders 1-2001 through 13-2001, 15-2001.)

9 25. During the course of her employment, Plaintiff and other employees were required by Defendants
10 to work through their lunches and perform work during their meal and rest periods, and therefore,
11 Plaintiff and other members in her class were denied relieved and off-duty meal and rest periods.

12 26. Defendants willfully failed and refused to pay Plaintiff and other employees one additional hour
13 of pay at their regular rate of pay for each workday that a meal or rest period was not provided
14 as required by Labor Code Section 226.7.

15 27. California Labor Code § 226 states, in part, that each pay period, Defendants shall provide its
16 employees an accurate Itemized Wage Statement, showing (in part) the gross wages earned and
17 the total hours earned by each employee.

18 28. During the course of her employment, Plaintiff and other employees were not provided statutorily
19 compliant Itemized Wage Statements ("pay-stubs") by Defendants.

20 29. As a direct result of Defendants' willful failure and refusal to (a) provide the mandated meal or
21 rest period or pay one additional hour of pay at the regular rate of pay for each workday that a
22 meal or rest period was not provided, and (b) failure to comply with Labor Code section 226,
23 Plaintiff and other employees have suffered injury, loss and harm all to their damages in a sum
24 according to proof. On behalf of the class, Plaintiff hereby seeks compensatory damages, back
25 pay (or penalty), and prejudgement interest, and the payment of one hour of pay at the regular rate
26 of pay, for each day the Meal or Rest period was not provided.

27 30. California Labor Code § 510(a) states that, "Eight hours of labor constitutes a day's work. Any
28 work in excess of eight hours in one workday and any work in excess of 40 hours in any one
workweek and the first eight hours worked on the seventh day of work in any one workweek shall

1 be compensated at the rate of no less than one and one-half times the regular rate of pay for an
2 employee."

3 31. During the course of her employment, Plaintiff and other employees were not compensated at
4 one and one half (1½) times their regular rate of pay for hours worked in excess of 8 hours a
5 day and/or 40 hours a week. As a result, Plaintiff and other employees have suffered injury,
6 loss and harm all to their damages in a sum according to proof.

7 32. Labor Code section 2802(a) states that, "[a]n employer shall indemnify his or her employee for
8 all necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties, or of his or her obedience to the directions of the employer."

10 33. During the course of her employment, Plaintiff and other employees were required by Defendants
11 to purchase, using their own funds, custom pants, shirts, and shoes as part of their "work
12 uniforms." Additionally, Plaintiff and other employees were required to clean all or part of their
13 "work uniforms." Plaintiff and other employees were not reimbursed by Defendants for these
14 expenditures.

15 34. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
16 presently unaware of the precise amount of these expenses and fees and prays leave of court to
17 amend this Complaint when the amounts are more fully known.

18
19
20 **SECOND CAUSE OF ACTION**
Violation of Business and Professions Code §17200 - Class Action
(By The Class Against All Defendants)

21 35. Plaintiff hereby incorporates by reference paragraphs 1 through 34 as though fully set forth
22 herein.

23 36. Plaintiff is an ex-employee and direct victim of Defendants' illegal business acts and practices
24 referenced in this complaint, and has lost money as a result of such practices, and is suing both
25 in her individual capacity and on behalf of former or current employees of Defendants who share
26 a common or general interest in the damages as a result of the illegal practices. Specifically,
27 Plaintiff is bringing this claim on behalf of Defendant Employer's current and former employees
28 who are/were improperly denied mandated relieved meal and rest periods and required wages

1 under Labor Code Section 226.7, denied overtime compensation under Labor Code Section 510,
2 denied statutorily compliant pay-stubs under Labor Code Section 226, and required to purchase
3 and clean uniforms using their funds, a violation of Labor Code Section 2802. The class of
4 present and former employees is believed to be approximately 5000 members.

5 37. The approximately 5000 member class is ascertainable via their experience as present or past
6 employees of Defendant Employer. The members share a community of interest, and an injury
7 in fact, as Defendant Employer has violated California compensation laws, thereby depriving the
8 class members of money earned by them. Based on the facts set forth above, it would be
9 impracticable to proceed in individual actions.

10 38. Plaintiff has suffered an injury in fact pursuant to Business and Professions Code Section 17204,
11 and has lost money as a result of Defendant Employer's illegal practices, in that she was
12 improperly denied Wages in violation of Labor Code Section 226.7, throughout her employment
13 with Defendant Employer.

14 39. Plaintiff is bringing this action on behalf of an ascertainable class, who share a community of
15 interest, pursuant to Business and Professions Code Section 17203 and Code of Civil
16 Procedure Section 382, who share a common or general interest in the damages as a result of
17 the illegal practices, in that those individuals on whose behalf the action is brought have also
18 lost money as a result of Defendants' practices, by denying them proper payment of Wages under
19 Labor Code Section 226.7, denying them overtime compensation under Labor Code Section 510,
20 denying them statutorily compliant pay-stubs under Labor Code Section 226, and requiring them
21 to purchase and clean uniforms using their funds, a violation of Labor Code Section 2802, and
22 that it would be impracticable to proceed in as an individual plaintiff action.

23 40. As set forth above, during the course of Plaintiff's employment, Defendants failed and refused
24 to properly pay Plaintiff, and other employees, mandated meal and rest periods and one hour of
25 pay at the employees' regular rate of pay for each day the meal and rest periods were not
26 provided. (Labor Code Sections 226.7, 512; Title 8, California Code of Regulations Section
27 11010(11)(C).) Defendants failed and refused to properly pay Plaintiff, and other employees
28 overtime compensation for hours worked in excess of 8 hours a day and/or 40 hours a week.
(Labor Code Section 510.) Defendants failed and refused to provide Plaintiff, and other

- 1 employees statutorily compliant pay-stubs. (Labor Code Section 226.) Defendants improperly
2 required Plaintiff and other employees to purchase and clean work uniforms using their funds.
3 (Labor Code section 2802.)
- 4 41. California Business and Professions Code § 17200 *et seq.*, prohibits any unlawful, unfair, or
5 fraudulent business act or practice.
- 6 42. Plaintiff's allegations herein are based upon the business acts and practices of the Defendants.
- 7 43. Defendants' acts and practices as described herein above are unlawful, in that they violate the
8 California Labor Code.
- 9 44. As a direct result of Defendants' unlawful business acts and practices, Plaintiff, and other
10 employees, have been denied wages earned, and have therefore been damaged in amount to be
11 proven. Accordingly, Plaintiff prays for restitution and injunctive damages in an amount to be
12 proven.
- 13 45. Plaintiff is informed and believes, and on that basis alleges, that the unlawful business practices
14 alleged above are continuing in nature and are widespread practices engaged by Defendants.
- 15 46. On behalf of the ascertainable class, Plaintiff respectfully requests an injunction against
16 Defendants, to enjoin them from continuing to engage in the illegal conduct alleged herein.
- 17 47. On behalf of the ascertainable class, Plaintiff respectfully requests restitution damages.
- 18 48. Plaintiff has incurred and continues to incur legal expenses and attorneys' fees. Plaintiff is
19 presently unaware of the precise amount of these expenses and fees and prays leave of court to
20 amend this Complaint when the amounts are more fully known.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff on her own behalf and on behalf of the members of the class and the
23 general public, prays for judgment as follows:

- 24 1. For an order certifying the proposed class;
- 25 2. Upon the First Cause of Action, for compensatory damages according to proof as set forth in
26 California Labor Code § 226, California Labor Code § 226.7, California Labor Code § 510, and
27 California Labor Code § 2802, for failing to provide statutorily compliant itemized wage
28 statements ("pay-stubs"), failing to provide overtime compensation for hours worked in excess

1 of 8 hours a day and/or 40 hours a week, denying mandated meal and rest periods and other
2 wages resulting from failure to count work employees performed during meal breaks as time
3 worked, and for improperly requiring employees to purchase work uniforms using their own
4 funds;

5 3. Upon the First Cause of Action, for waiting time penalties according to proof pursuant to
6 California Labor Code § 203;

7 4. Upon the First Cause of Action, for penalties pursuant to California Labor Code §§ 558, 1199,
8 and Title 8, California Code of Regulations Section 11010 Section 20.

9 5. For compensatory damages in an amount to be proven;

10 6. For lost back pay in an amount to be proven;

11 7. On behalf of the ascertainable class, for a permanent injunction against Defendant Employer
12 restraining, preventing, and enjoining Defendant Employer from engaging in the illegal practices
13 alleged, and to ensure compliance with Labor Code section 226;

14 8. On behalf of the ascertainable class, for restitution damages on behalf of the Section 17200
15 claimants who share a common or general interest;

16 9. For an award of interest, including prejudgement interest, pursuant to Labor Code Section 218.6;

17 10. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code Sections 226,
18 2802, 1194 and 218.5;

19 11. For an award of punitive and exemplary damages where permissible;

20 12. For such other relief as the court deems just and proper.

21
22
23
24 Dated: 4/16/07

SULLIVAN & CHRISTIANI, LLP

25
26 
27 William B. Sullivan,
28 Eric J. Palmer,
Attorneys for Plaintiff KIMBERLY ALEKSICK

EXHIBIT B

611

ENDORSED
JUN 01 2007SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLEN, CLERK
BY BECKY GUERRERO
CITY

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Attorneys for Defendant
7-ELEVEN, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

KIMBERLY ALEKSICK, individually and on
behalf of other members of the general public
similarly situated,

Plaintiff,

v.

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and DOES
1-50, inclusive,

Defendants.

CASE NO. ECU03615

Assigned for All Purposes to:
Judge: The Hon. Joseph Zimmerman
Department: 9

**ANSWER OF DEFENDANT 7-ELEVEN,
INC. TO PLAINTIFF'S COMPLAINT**

Date Action Filed: April 16, 2007
Trial Date: None Set

GENERAL DENIAL

Defendant 7-Eleven, Inc. ("Defendant") for itself and for no other defendant, denies, generally and specifically, each and every allegation contained in the Complaint for Damages filed herein by Plaintiff Kimberly Aleksick ("Plaintiff"). Defendant further denies, generally and specifically, that Plaintiff has been damaged in any sum, or at all, by reason of any act or omission on the part of Defendant or on the part of any agent or employee of Defendant, or any of them.

ANSWER TO COMPLAINT

Exhibit B, Page 25

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ATTORNEYS AT LAW
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IRVINE, CA 92614
(949) 851-1100

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AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

1. The Complaint, and each alleged cause of action therein, fails to state sufficient facts to constitute a claim upon which relief may be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Statute of Limitations)

2. The Complaint, and each alleged cause of action therein, is barred, in whole or in part, by the applicable statutes of limitation, including but not limited to Code of Civil Procedure sections 338(a), 340(a), 340 (b) and 343; Labor Code section 203; and Business and Professions Code section 17208.

THIRD AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

3. The Complaint, and each cause of action alleged therein, is barred because Plaintiff failed to satisfy the procedural prerequisites prior to filing the action or to exhaust available administrative remedies in a timely manner.

FOURTH AFFIRMATIVE DEFENSE

(Proper Compensation)

4. Defendant is informed and believes that Plaintiff's claims are barred in

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 951-1100

1 whole or in part because at all times mentioned in the Complaint, Plaintiff was compensated
2 properly pursuant to the requirements contained in the California Labor Code and the Wage
3 Orders of the California Industrial Welfare Commission.

4
5 **FIFTH AFFIRMATIVE DEFENSE**

6 (Lack of Standing)

7
8 5. Plaintiff, as a private litigant, lacks standing to bring a claim for damages
9 under California Business and Professions Code section 17200 *et seq.*

10
11 **SIXTH AFFIRMATIVE DEFENSE**

12 (Good Faith Belief)

13
14 6. The Complaint, and each alleged cause of action therein, is barred, in whole
15 or in part, because Defendant did not employ Plaintiff, and even if Defendant had employed
16 Plaintiff, Defendant acted in good faith conformity with and reliance on regulations, orders,
17 rulings interpretations, practices or policies of the California Industrial Welfare Commission and
18 the California Division of Labor Standards Enforcement.

19
20 **SEVENTH AFFIRMATIVE DEFENSE**

21 (Legitimate Business Reason)

22
23 7. The Complaint, and each alleged cause of action therein, is barred, in whole
24 or in part, because each employment action of which Plaintiff complains, if it occurred at all, was
25 taken for legitimate business reasons that did not violate public policy or any statutory prohibition.

EIGHTH AFFIRMATIVE DEFENSE**(Justification)**

8. Plaintiff's Complaint, and each cause of action alleged therein, is barred because Defendant's actions with respect to the subject matter in each of the alleged causes of action was undertaken in good faith and for good cause, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further Defendant's purpose to engage in and continue their business activities.

NINTH AFFIRMATIVE DEFENSE**(No Ratification)**

9. Defendant is not liable for damages because if any person engaged in intentional, willful or unlawful conduct as alleged in Plaintiff's Complaint, he or she did so without the knowledge, authorization or ratification of Defendant.

TENTH AFFIRMATIVE DEFENSE**(No Commonality)**

10. The Complaint, and each alleged cause of action therein, is not proper for treatment as a class action because, among other reasons: (a) Plaintiff has not identified an ascertainable class; (b) Plaintiff is an inadequate representative of the purported class; (c) Plaintiff cannot establish typicality of claims; and (d) the individualized nature of the putative class's claims make class treatment inappropriate.

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate)

11. The Complaint, and each alleged cause of action therein, is barred, in whole or in part, by Plaintiff's failure to mitigate damages as required by law.

TWELFTH AFFIRMATIVE DEFENSE

(Offset)

12. Plaintiff's damages, if any, must be reduced by amounts Plaintiff owes to Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE

(Uncertainty)

13. Plaintiff's losses, if any, are speculative and uncertain or both, and therefore not compensable.

FOURTEENTH AFFIRMATIVE DEFENSE

(No Punitive or Exemplary Damages)

14. Plaintiff's prayer for punitive and exemplary damages is barred on the ground that punitive and exemplary damages are not available under the statutory causes of action pled by Plaintiff. Even if they were available, the acts or omissions alleged by Plaintiff were made in good faith by Defendant, and Defendant had reasonable grounds for believing that the alleged acts or omissions were not in violation of the California Labor Code, and therefore no punitive or exemplary damages are available.

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

FIFTEENTH AFFIRMATIVE DEFENSE

(Causation by Plaintiff)

15. Plaintiff's Complaint, and each alleged cause of action therein, is barred, in whole or in part, because any damages or injuries that Plaintiff allegedly suffered were caused by Plaintiff's own conduct and actions, and not because of any unlawful conduct or actions by Defendant.

SIXTEENTH AFFIRMATIVE DEFENSE

(Unclean Hands)

16. The Complaint, and each alleged cause of action therein, is barred by the doctrine of unclean hands because of Plaintiff's conduct and actions.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Estoppel)

17. Plaintiff's Complaint, and each cause of action alleged therein, is barred because Plaintiff is estopped from asserting each of the claims alleged therein.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Waiver)

18. Plaintiff's Complaint, and each cause of action alleged therein, is barred because Plaintiff has waived the right, by reason of her conduct and actions, to assert each of the claims alleged herein.

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

NINETEENTH AFFIRMATIVE DEFENSE

(Laches)

19. Plaintiff's Complaint, and each cause of action alleged therein, is barred by the doctrine of laches.

TWENTIETH AFFIRMATIVE DEFENSE

(After-Acquired Evidence Doctrine)

20. Plaintiff's alleged causes of action, and each of them, and Plaintiff's claims for damages, back wages and penalties may be barred by after acquired evidence of misconduct by Plaintiff.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(No Liability for Acts of Other Defendants)

21. Defendant is not liable for the alleged acts of Michael Tucker and Tuckers 7-Eleven on the grounds that Tuckers 7-Eleven and Michael Tucker are independent contractors and are not employees or agents of Defendant.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Plaintiff not employed by Defendant)

22. Plaintiff's alleged causes of action, and each of them, against 7-Eleven, Inc. are barred on the grounds that 7-Eleven Inc. did not employ Plaintiff or any putative class member.

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

WHEREFORE, Defendant prays for judgment as follows:

1. That judgment be entered in favor of Defendant and against Plaintiff;
2. That the Complaint herein be dismissed in its entirety with prejudice;
3. That Defendant be awarded its costs of suit herein;
4. That Defendant be awarded reasonable attorney's fees as determined by the Court; and
5. For such other and further relief as the Court may deem just and proper.

DATED: June 1, 2007

PAYNE & FEARS LLP

By: 

LAUREL E. ADCOCK

Attorneys for Defendant
7-ELEVEN, INC.

355198.1

ENDORSED

JUN 01 2007

PROOF OF SERVICE*Alesick vs. 7-Eleven, Inc.*
*Case No. ECU03615*SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLÉN, CLERK
BY BECKY GUERRERO

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On June 1, 2007, I served the following document(s) described as **ANSWER OF DEFENDANT 7-ELEVEN, INC. TO PLAINTIFF'S COMPLAINT** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

SEE ATTACHED SERVICE LIST

- ☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.
- ☐ (By Personal Service) I delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.
- ☐ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.
- ☐ (By E-Mail) I transmitted a copy of the foregoing documents(s) via e-mail to the addressee(s).
- ☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 1, 2007, at Irvine, California.


 LISAN IWATA

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

PROOF OF SERVICE

Exhibit B, Page 33

SERVICE LIST

William B. Sullivan, Esq.
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761

Attorneys For Plaintiff,
KIMBERLY ALEKSICK

Eric A. Welter, Esq.
WELTER LAW FIRM, P.C.
720 Lynn St., Suite B
Herndon, Virginia 20170
Tel: (703) 435-8500
Fax: (703) 435-8851

Attorneys for Defendant
7-ELEVEN, INC.

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

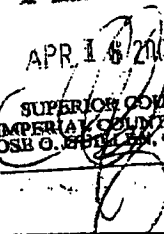
354893.1

PROOF OF SERVICE

Exhibit B, Page 34

EXHIBIT C

F 4/16
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| | | |
|---|----------------------|---|
| SUPERIOR COURT OF STATE OF CALIFORNIA COUNTY OF IMPERIAL | | FILED APR 16 2007 SUPERIOR COURT IMPERIAL COUNTY CA. JOSE O. GUILLÉN, CLERK BY  DEPUTY |
| Kimberly Aleksick | Plaintiff/Petitioner | |
| vs. | | |
| 7-Eleven Inc et al | Defendant/Respondent | |
| NOTICE OF CASE MANAGEMENT CONFERENCE | | CASE No ecu03615 |

1. NOTICE is given that a CASE MANAGEMENT CONFERENCE has been scheduled as follows:

Date: 08-14-2007**Time: 8:30 a.m.****Dept.:7**

Address of court: Imperial County Courthouse, 939 West Main Street, El Centro, CA 92243

2. You must file and serve a completed Case Management Conference Statement at least fifteen (15) days before the case management conference.
3. You must be familiar with the case and be fully prepared to participate effectively in the case management conference.
4. At the case management conference the court may make pretrial orders, including the following:
 - a) An order establishing a discovery schedule.
 - b) An order referring the case to arbitration.
 - c) An order dismissing fictitious defendants.
 - d) An order scheduling exchange of expert witness information.
 - e) An order setting subsequent conferences and the trial date.
 - f) Other orders to achieve the goals of the Trial Court Delay Reduction Act (Gov. Code § 68600 et seq.).
5. Parties wishing to appear by telephone must comply with CRC 3.670 and local Rule 10.07.
6. DATED: APR 16 2007

Jose O. Guillen, Clerk by, 

Deputy

-- SANCTIONS --

If you do not file the Case Management Conference Statement required by CRC 3.725, or attend the case management conference or participate effectively in the conference, the Court may impose sanctions (including dismissal of the case, striking of the answer, and payment of money).

NOTICE OF CASE MANAGEMENT CONFERENCE

CRC 3.725 and Imperial County Local Rule 3.10
Government Code §68600 et seq.

ICSC C-114 01/07

EXHIBIT D

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ENDORSED
FILED AUG 08 2007
JOSE O. GULLEN
BY D. G. [Signature]
DEPUTY

7/12
ECS
LPF
E. Weiter
Laura

FILED
AUG 8 2007
SUPERIOR COURT
IMPERIAL COUNTY CA.
JOSE O. GULLEN, CLERK
BY [Signature] DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

KIMBERLY ALEKSICK, individually and
on behalf of other members of the general
public similarly situated,

Plaintiff,

v.

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and
DOES 1-50, Inclusive,

Defendants

CASE NO. ECU03615

(CLASS ACTION)

[PROPOSED] ORDER GRANTING
PLAINTIFF'S REQUEST TO CONTINUE
THE CASE MANAGEMENT
CONFERENCE

Dept. 9

Having considered Plaintiff's counsel's request to continue the Case Management Conference (CMC) in the above-captioned matter to Thursday, August 23, 2007 at 8:30 a.m., and good cause appearing therefore, the court grants Plaintiff's request to continue the CMC to Thursday, August 23, 2007 at 8:30 a.m.

IT IS HEREBY ORDERED

///

///

///


///

///

1 **IT IS SO ORDERED**

2 The Case Management Conference in this matter is continued to Thursday, August 23, 2007 at 8:30
3 a.m.

4
5 Dated: 8-8-07


Judge of the Superior Court
Dept. 9

PROOF OF SERVICE*Kimberly Aleksick v. 7-Eleven, Inc., et al.*

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On July 12, 2007, I served the following document(s) described as **[PROPOSED] ORDER GRANTING APPLICATION OF ERIC A. WELTER TO APPEAR AS COUNSEL PRO HAC VICE** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

William B. Sullivan, Esq.
Eric J. Palmer, Esq.
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761

Attorneys For PLAINTIFF
KIMBERLY ALEKSICK

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

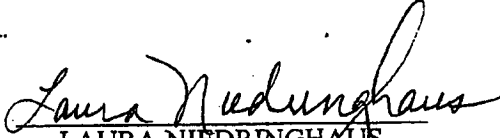
☐ (By Personal Service) I delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.

☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.

☐ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 12, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

362342.1

EXHIBIT E

07/11/2007 22:34

9494742993

ASAP CORPORATE SVCS

PAGE 11

ENDORSED
JUL 12 2007SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLEN, CLERK
BY ADRIANA GARCIA
DEPUTY

PAYNE & FEARS LLP
Eric C. Sohlgren, Bar No. 161710
Lindley P. Fraley, Bar No. 223421
4 Park Plaza, Suite 1100
Irvine, CA 92614
Telephone: (949) 851-1100
Facsimile: (949) 851-1212

WELTER LAW FIRM, P.C.
Eric A. Welter, Virginia Bar No. 38193
720 Lynn Street, Suite B
Herndon, VA 20170
Telephone: (703) 435-8500
Facsimile: (703) 435-8851

Attorneys for Defendant
7-Eleven, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL**

KIMBERLY ALEKSICK,
Plaintiff,

v.

7-ELEVEN, INC.; MICHAEL TUCKER; and
DOES 1-50, Inclusive,
Defendants.

CASE NO. ECU03615

Assigned for all purposes to the Christopher
W. Yeager

**NOTICE OF MOTION AND
APPLICATION OF ERIC A. WELTER
TO APPEAR AS COUNSEL *PRO HAC*
VICE; MEMORANDUM OF POINTS
AND AUTHORITIES IN SUPPORT
THEREOF**

Hearing Date: August 10, 2007
Time: 8:30 a.m.
Department: 7

Date Action Filed: April 16, 2007
Trial Date: None set

TO ALL PARTIES AND ATTORNEYS OF RECORD IN THIS ACTION:

PLEASE TAKE NOTICE THAT on August 10, 2007, at 8:30 a.m. in
Department 7 of the above-entitled Court located at 939 Main Street, El Centro, California
92243, defendant 7-Eleven, Inc. ("7-Eleven"), will and hereby does move for an Order
permitting Virginia attorney Eric A. Welter to appear as counsel *pro hac vice* for 7-Eleven in this
action.

MOTION AND APPLICATION TO APPEAR *PRO HAC VICE*

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

ORIGINAL

1 7-Eleven's Motion is based on this Notice of Motion, the Application of Eric A.
2 Welter to Appear *Pro Hac Vice*, and all papers in support thereof, including the Memorandum of
3 Points and Authorities, the Declaration of Lindley P. Fraley, and the Declaration of Eric A.
4 Welter, all of which are filed concurrently herewith, the complete files and records of this action,
5 and such further oral or documentary evidence as may be presented at or before the hearing on
6 this Motion.

7
8 DATED: July 11, 2007

PAYNE & FEARS LLP

9
10 By: _____

Lindley P. Fraley
LINDLEY P. FRALEY

11 Attorneys for Defendant
12 7-Eleven, Inc.

13 355759.1

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

1 **APPLICATION OF ERIC A. WELTER TO APPEAR *PRO HAC VICE***

2
3 Eric A. Welter, Esq., hereby applies to the Court to appear *pro hac vice*, or
4 alternatively by consent of this Court, to represent defendant 7-Eleven, Inc., in the above-entitled
5 action. This Application is made on the following grounds:
6

7 1. The applicant is a resident of the State of Virginia, residing at 400
8 Lawford Drive SW, Leesburg, Virginia 20175 and maintaining an office at Welter Law Firm,
9 P.C., 720 Lynn Street, Suite B, Herndon, Virginia 20170;
10

11 2. The applicant is admitted to practice and is in good standing in the State of
12 Virginia; the U.S. District Court for the District of Columbia; the Maryland Court of Appeals;
13 the Supreme Court of Minnesota; the Supreme Court of Nebraska; and the United States
14 Supreme Court;
15

16 3. The applicant is in good standing in those courts;
17

18 4. The applicant has not been suspended or disbarred by any court;
19

20 5. Lindley P. Fraley of the law firm of Payne & Fears LLP, 4 Park Plaza,
21 Suite 1100, Irvine, California 92614, (949) 851-1100, is an active member in good standing of
22 the State Bar of California and has appeared herein as counsel of record for Defendant, and will
23 serve as associate counsel for Defendant;
24

25 6. The accompanying declaration by the applicant meets the requirements of
26 California Rule of Court 983; and
27

28 7. The exigencies of the case require Mr. Welter's admission.

1 Alternatively, the applicant requests that this Court grant its consent pursuant to
2 its inherent powers and allow applicant to appear in California in the pending, above-entitled
3 action. *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court*, 17 Cal. 4th 119, 70
4 Cal. Rptr. 2d 304, 309 (1998).

5
6 DATED: July 11, 2007

PAYNE & FEARS LLP

7
8 By: _____

Lindley P. Fraley
LINDLEY P. FRALEY

9 Attorneys for Defendant
7-Eleven, Inc.

10 355759.1

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 A. California Rule of Court 983 Authorizes an Attorney Not Licensed to Practice in
4 California to Appear as Counsel *Pro Hac Vice*
5

6 Rule 983 of the California Rules of Court provides for the admission of counsel
7 not licensed by the State Bar of California to appear as counsel *pro hac vice* before the Superior
8 Court. The requirements for such admission are: (1) that the applicant is admitted to practice
9 and is in good standing in the highest court of another state or in a federal court; (2) that the
10 applicant is not a California resident, nor is he regularly engaged in substantial professional
11 practice or other business activities in California; (3) that the applicant is not currently suspended
12 or disbarred by any court; (4) that a member in good standing of the State Bar of California be
13 associated with the applicant as counsel of record; and (5) that the applicant submit a verified
14 declaration stating various personal and professional information.
15

16 This application meets all of the above requirements. Mr. Welter is an attorney in
17 the State of Virginia and has been a member in good standing of the Supreme Court of Virginia
18 since 1995; the United States District Court for the District of Columbia since 1994; the
19 Maryland Court of Appeals since 2004; the Supreme Court of Minnesota since 1992; the
20 Supreme Court of Nebraska since 2000; and the United States Supreme Court since 2004.
21 Further, Mr. Welter has never been suspended, disbarred or had any disciplinary action taken
22 against him in any of these states, nor is any such action pending against him.
23

24 The need for Mr. Welter's admission *pro hac vice* arises from the logistical needs
25 of this case. Mr. Welter seeks admission *pro hac vice* in this matter because he is long-time
26 counsel to 7-Eleven. Mr. Welter has extensive knowledge of 7-Eleven's business operations,
27 employment policies, and the facts and circumstances of the Orange County litigation, and his
28 admission *pro hac vice* will be both cost effective and judicially efficient throughout the course

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

1 of the litigation. Accordingly, Defendant respectfully requests that Mr. Welter be allowed to
2 appear as counsel herein *pro hac vice*.

3
4 **B. This Court Has the Authority Under California Law to Allow an Attorney Not**
5 **Licensed to Practice in California to Appear in California in a Pending Action By**
6 **Consent of Court**

7
8 Alternatively, should this Court find that Rule 983 does not allow a *pro hac vice*
9 appearance in this case, it has inherent power to allow an attorney to practice before it. As the
10 Supreme Court of California has recognized, "an out-of-state attorney not licensed to practice in
11 California may be permitted, *by consent of a trial judge*, to appear in California in a particular
12 pending action." *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Ct.*, 17 Cal. 4th
13 119, 70 Cal. Rptr. 2d 304, 309-10 (Cal. 1998) (emphasis in original) (citing *In re McCue*, 211
14 Cal. 57, 67, 293 P. 47 (1930), and 1 WITKIN, CAL. PROCEDURE, *Attorneys* § 402 (4th ed. 1996)).
15 As the Declaration of Mr. Welter demonstrates, he has passed the Virginia Bar Exam, and has
16 remained a member in good standing in the States of Virginia, Minnesota and Nebraska and the
17 U.S. District Court for the District of Columbia. He has never been suspended or disbarred by
18 any court.

19
20 Therefore, Defendant respectfully requests that Mr. Welter be permitted, by
21 consent of this Court, to appear in California in the above-entitled pending action.

22
23 DATED: July 11, 2007

PAYNE & FEARS LLP

By: Lindley P. Fraley

LINDLEY P. FRALEY

26 Attorneys for Defendant
27 7-Eleven, Inc.

355759.1

PROOF OF SERVICE*Kimberly Aleksick v. 7-Eleven, Inc., et al.*

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On July 12, 2007, I served the following document(s) described as **NOTICE OF MOTION AND APPLICATION OF ERIC A. WELTER TO APPEAR AS COUNSEL PRO HAC VICE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

William B. Sullivan, Esq.
Eric J. Palmer, Esq.
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761

Attorneys For PLAINTIFF
KIMBERLY ALEKSICK

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

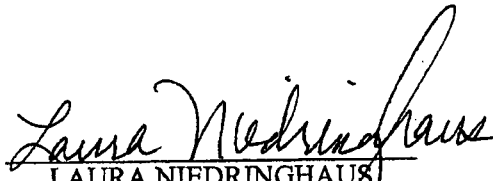
☐ (By Personal Service) I delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.

☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.

☐ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 12, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

362342.1

PROOF OF SERVICE

Exhibit E, Page 45

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

07/11/2007 22:34

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ASAP CORPORATE SVCS

PAGE 02

ENDORSED
JUL 12 2007SUPERIOR COURT
IMPERIAL COUNTY
JOSE C. GUILLEN, CLERK
BY ADRIANA GARCIA
DEPUTY

1 PAYNE & FEARS LLP
Eric C. Sohlgren, Bar No. 161710
2 Lindley P. Fraley, Bar No. 223421
4 Park Plaza, Suite 1100
3 Irvine, CA 92614
Telephone: (949) 851-1100
4 Facsimile: (949) 851-1212

5 WELTER LAW FIRM, P.C.
Eric A. Welter, Virginia Bar No. 38193
6 720 Lynn Street, Suite B
Herndon, VA 20170
7 Telephone: (703) 435-8500
8 Facsimile: (703) 435-8851

9 Attorneys for Defendant
7-Eleven, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF IMPERIAL

KIMBERLY ALEKSICK,

Plaintiff,

v.

15 7-ELEVEN, INC.; MICHAEL TUCKER; and
16 DOES 1-50, Inclusive,

Defendants.

CASE NO. ECU03615

Assigned for all purposes to the Hon.
Christopher W. Yeager

**DECLARATION OF LINDLEY P.
FRALEY IN SUPPORT OF
DEFENDANT 7-ELEVEN INC.'S
APPLICATION FOR ADMISSION *PRO
HAC VICE* OF ERIC A. WELTER**

Hearing Date: August 10, 2007
Time: 8:30 a.m.
Department: 7

Date Action Filed: April 16, 2007
Trial Date: None set

I, Lindley P. Fraley, hereby declare as follows:

1. I am an attorney licensed to practice law before this Court and all courts of the State of California. I am an associate with the law firm of Payne & Fears LLP, attorneys of record for 7-ELEVEN, INC., ("7-Eleven") defendant herein. I have personal knowledge of the facts set forth below and, if called and sworn as a witness, I could and would testify competently to them. I submit this Declaration in support of 7-Eleven's Motion and Application of Eric A. Welter to Appear as Counsel *Pro Hac Vice*.

SOHLGREN DECL. RE: 7-ELEVEN INC.'S PRO HAC VIC APP. FOR ADMISSION OF ERIC WELTER

PAYNE & FEARS LLP
ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

ORIGINAL

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

1 2. Attached hereto as Exhibit "A" is a true and correct copy of a check issued
2 by Payne & Fears LLP to the State Bar of California in the amount of fifty dollars (\$50.00), which
3 constitutes the *pro hac vice* admission fee for applicant Eric A. Welter. I caused this check to be
4 submitted to the State Bar of California together with its service copy of this application.
5

6 3. If the application is granted, I intend to remain counsel of record for 7-
7 Eleven. In the unforeseen event that I am unable to personally remain counsel of record for 7-
8 Eleven, another member of the firm who is a member in good standing of the State Bar of
9 California will assume my duties.
10

11 4. The above-entitled matter has just been filed. Mr. Welter has been the
12 longstanding employment litigation counsel for Defendant, and he resides in the State of Virginia.
13 It is 7-Eleven's strong desire to have Mr. Welter be involved in representing it in this matter.
14

15 I have read the foregoing and declare under penalty of perjury under the laws of the
16 State of California that it is true and correct and that this Declaration is executed this 11th day of
17 July, 2007, at Irvine, California.
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20 LINDLEY P. FRALEY
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PROOF OF SERVICE*Kimberly Aleksick v. 7-Eleven, Inc., et al.*

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On July 12, 2007, I served the following document(s) described as **DECLARATION OF LINDLEY P. FRALEY IN SUPPORT OF DEFENDANT 7-ELEVEN INC.'S APPLICATION FOR ADMISSION PRO HAC VICE OF ERIC A. WELTER** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

William B. Sullivan, Esq.
Eric J. Palmer, Esq.
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761

Attorneys For PLAINTIFF
KIMBERLY ALEKSICK

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.


☐ (By Personal Service) I delivered by hand on the interested parties in this action by placing the above mentioned document(s) thereof in envelope addressed to the office of the addressee(s) listed above or on attached sheet.

☐ (By Facsimile) I served a true and correct copy by facsimile pursuant to C.C.P. 1013(e), calling for agreement and written confirmation of that agreement or court order, to the number(s) listed above or on attached sheet. Said transmission was reported complete and without error.

☐ (By Overnight Courier) served the above referenced document(s) enclosed in a sealed package, for collection and for delivery marked for next day delivery in the ordinary course of business, addressed to the office of the addressee(s) listed above or on attached sheet.

☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 12, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

362342.1

JUL 11 2007 10:37

THE STATE BAR OF CA

415 538 2180

F. 11

EC


FILE COPY

PAYNE & FEARS LLP
 Eric C. Sohlgren, Bar No. 161710
 Lindley P. Fraley, Bar No. 223421
 4 Park Plaza, Suite 1100
 Irvine, CA 92614
 Telephone: (949) 851-1100
 Facsimile: (949) 851-1212

THE STATE BAR OF CALIFORNIA
 OFFICE OF SPECIAL ADMISSIONS
 AND SPECIALIZATION

JUL 13 2007

WELTER LAW FIRM, P.C.
 Eric A. Welter, Virginia Bar No. 38193
 720 Lynn Street, Suite B
 Herndon, VA 20170
 Telephone: (703) 435-8500
 Facsimile: (703) 435-8851

CONFIRMATION RECEIPT
 S: 50 INTL: 
 P: 7 SB FILE #: 40755

Attorneys for Defendant
 7-Eleven, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF IMPERIAL

KIMBERLY ALEKSICK,

Plaintiff,

v.

7-ELEVEN, INC.; MICHAEL TUCKER; and
 DOES 1-50, Inclusive,

Defendants.

CASE NO. ECU03615

Assigned for all purposes to the Hon.
 Christopher W. Yeager

DECLARATION OF LINDLEY P.
 FRALEY IN SUPPORT OF
 DEFENDANT 7-ELEVEN INC.'S
 APPLICATION FOR ADMISSION *PRO*
HAC VICE OF ERIC A. WELTER

Hearing Date: August 10, 2007
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1. I am an attorney licensed to practice law before this Court and all courts the State of California. I am an associate with the law firm of Payne & Fears LLP, attorneys of record for 7-ELEVEN, INC., ("7-Eleven") defendant herein. I have personal knowledge of the facts set forth below and, if called and sworn as a witness, I could and would testify competently to them. I submit this Declaration in support of 7-Eleven's Motion and Application of Eric A. Welter to Appear as Counsel *Pro Hac Vice*.

PAYNE & FEARS LLP

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 IRVINE, CA 92614
 (949) 851-1100

PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
(949) 851-1100

2. I reside at 400 Lawford Drive SW, Leesburg,, Virginia 20175, and maintain my office at Welter Law Firm, P.C., 720 Lynn Street, Suite B, Herndon, Virginia 20170. I was admitted to practice before the Supreme Court of Virginia in 1995; the District of Columbia Court of Appeals in 1994; the Maryland Court of Appeals in 2004; the Supreme Court of Minnesota in 1992; the Supreme Court of Nebraska in 2000; and the United States Supreme Court in 2004. I am a member in good standing in these courts (I am currently an inactive member of the Nebraska and Minnesota Bars) and am not currently suspended or disbarred in any court.

3. I applied to appear *pro hac vice* in *Garcia v. 7-Eleven*, Case No. CV817485, Superior Court of Santa Clara County, on August 11, 2003. The application was granted by the Court on September 23, 2003.

4. I applied to appear *pro hac vice* in *Ali v. 7-Eleven, Inc.*, Case No. 05CC05050, Superior Court of Orange County on May 25, 2005. The application was granted by the Court on June 30, 2005.

5. I applied to appear *pro hac vice* in *Love v. 7-Eleven, Inc.*, Case No. ECU03181, Superior Court of Imperial County on September 1, 2006. The application was granted by the Court on September 26, 2006.

6. I request permission of the Court to appear as counsel *pro hac vice* in this matter in association with attorneys of record Eric C. Sohlgren and Lindley P. Fraley, Payne & Fears LLP, Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, California 92614, (949) 851-1100.

1 I have read the foregoing and declare under penalty of perjury under the laws of
2 the State of California that it is true and correct and that this Declaration is executed this 14th
3 day of June, 2007, at Herndon, Virginia.

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6 ERIC A. WELTER
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PAYNE & FEARS LLP

ATTORNEYS AT LAW
4 PARK PLAZA, SUITE 1100
IRVINE, CA 92614
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PROOF OF SERVICE*Kimberly Aleksick v. 7-Eleven, Inc., et al.*

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action; my business address is Jamboree Center, 4 Park Plaza, Suite 1100, Irvine, CA 92614.

On July 12, 2007, I served the following document(s) described as **DECLARATION OF ERIC A. WELTER IN SUPPORT OF DEFENDANT 7-ELEVEN INC.'S APPLICATION FOR ADMISSION PRO HAC VICE OF ERIC A. WELTER** on interested parties in this action by placing a true copy thereof enclosed in sealed envelopes as follows:

William B. Sullivan, Esq.
Eric J. Palmer, Esq.
SULLIVAN & CHRISTIANI, LLP
2330 Third Avenue
San Diego, CA 92101
Tel: (619) 702-6760
Fax: (619) 702-6761

Attorneys For PLAINTIFF
KIMBERLY ALEKSICK

☒ (BY U.S. Mail) I am readily familiar with my employer's business practice for collection and processing of correspondence for mailing with the United States Postal Service. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter is more than one day after date of deposit for mailing in affidavit. I deposited such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Irvine, California.

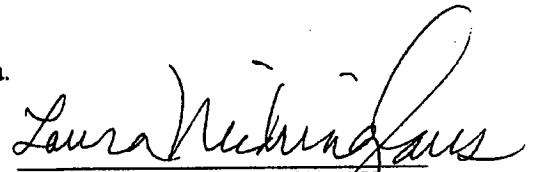
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☒ (STATE) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 12, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

362342.1

EXHIBIT F

07/16/2007 22:32 9494742993

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PAGE 02

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CM-110

| | | |
|--|--|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Eric C. Sohlgren, State Bar No. 161710 Lindley P. Fraley, State Bar No. 223421 Payne & Pears LLP 4 Park Plaza, Suite 1100 Irvine, CA 92614 TELEPHONE NO.: (949) 851-1100 FAX NO. (Optional): (949) 851-1212 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): 7-Eleven, Inc. | | FOR COURT USE ONLY ENDORSED JUL 17 2007 SUPERIOR COURT IMPERIAL COUNTY JOSE O. GUILLEN, CLERK BY MONICA PEREZ DEPUTY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF Imperial STREET ADDRESS: 939 West Main Street MAILING ADDRESS: CITY AND ZIP CODE: El Centro, 92243 BRANCH NAME: Imperial County Courthouse | | |
| PLAINTIFF/PETITIONER: Kimberly Aleksick DEFENDANT/RESPONDENT: 7-Eleven, Inc. | | |
| CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less) | | CASE NUMBER: ECU03615 |
| A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: August 14, 2007 Time: 8:30 a.m. Dept.: 7 Div.: Room: Address of court (if different from the address above): | | |

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- Party or parties (answer one):
 - ☒ This statement is submitted by party (name): 7-ELEVEN
 - ☐ This statement is submitted jointly by parties (names):
- Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)
 - The complaint was filed on (date):
 - ☐ The cross-complaint, if any, was filed on (date):
- Service (to be answered by plaintiffs and cross-complainants only)
 - ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
 - ☐ The following parties named in the complaint or cross-complaint
 - ☐ have not been served (specify names and explain why not):
 - ☐ have been served but have not appeared and have not been dismissed (specify names):
 - ☐ have had a default entered against them (specify names):
 - ☐ The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
- Description of case
 - Type of case in ☒ complaint ☐ cross-complaint (describe, including causes of action):
 Plaintiff seeks recovery for: (1) violation of Labor Code (class action) and (2) violation of Business and Professions Code Section 17200 (class action).

CM-110

| | |
|---|--------------|
| PLAINTIFF/PETITIONER: Kimberly Aleksick | CASE NUMBER: |
| DEFENDANT/RESPONDENT: 7-Eleven, Inc. | ECU03615 |

4. b. Provide a brief statement of the case, including any damages, (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.) Plaintiff seeks relief for wage/hour violations under the California Labor Code. Plaintiff worked as an employee of a 7-Eleven franchisee, Michael Tucker. Plaintiff seeks to hold 7-Eleven liable as the "employer" in this case even though Tucker was an independent contractor franchisee and there was no employment relationship between Plaintiff and 7-Eleven.

☐ (If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☒ a nonjury trial (If more than one party, provide the name of each party requesting a jury trial):

6. Trial date

- a. ☐ The trial has been set for (date):
- b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):
- c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability): 6/27/08; 7/7 - 7/28/08 conflicting trial.

7. Estimated length of trial

The party or parties estimate that the trial will take (check one):

- a. ☒ days (specify number): 2-3
- b. ☐ hours (short causes) (specify):

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☐ by the attorney or party listed in the caption ☒ by the following:

- a. Attorney: Eric A. Welter
- b. Firm: Welter Law Firm, P.C.
- c. Address: 720 Lynn Street, Suite B, Herndon, VA 20170
- d. Telephone number: 703-435-8500
- e. Fax number: 703-435-8851
- f. E-mail address: eaw@welterlaw.com
- g. Party represented: 7-Eleven, Inc.

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference (specify code section):

10. Alternative Dispute Resolution (ADR)

- a. Counsel ☐ has ☒ has not provided the ADR information package identified in rule 3.221 to the client and has reviewed ADR options with the client.
- b. ☐ All parties have agreed to a form of ADR. ADR will be completed by (date): Plaintiff did not provide copy of ADR.
- c. ☐ The case has gone to an ADR process (indicate status):

CM-110

PLAINTIFF/PETITIONER: Kimberly Aleksick
DEFENDANT/RESPONDENT: 7-Eleven, Inc.

CASE NUMBER:

ECU03615

10. d. The party or parties are willing to participate in (check all that apply):

- (1) ☐ Mediation
(2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 3.822)
(3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 3.822)
(4) ☐ Binding judicial arbitration
(5) ☐ Binding private arbitration
(6) ☐ Neutral case evaluation
(7) ☒ Other (specify): 7-Eleven is willing to participate in mediation after resolution of class certification.

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.g. ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court (specify exemption):

11. Settlement conference

☐ The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (name):
b. Reservation of rights: ☐ Yes ☐ No
c. ☐ Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
(1) Name of case:
(2) Name of court:
(3) Case number:
(4) Status:
☐ Additional cases are described in Attachment 14a.
b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (name party):

15. Bifurcation

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
Motion for summary adjudication and/or summary judgment, if the facts are supportive.

CM-110

PLAINTIFF/PETITIONER: Kimberly Aleksick

CASE NUMBER:

DEFENDANT/RESPONDENT: 7-Eleven, Inc.

ECU03615

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

| Party | Description | Date |
|-------------|------------------------------|--|
| 7-Eleven | Deposition of Plaintiff | 11/1/2007 |
| 7-Eleven | Deposition of Michael Tucker | 11/1/2007 |
| All Parties | Class Discovery | 12/31/2007 |
| All Parties | Merits Discovery | 6 months after resolution of class certification |

- c. ☒ The following discovery issues are anticipated (*specify*):
Whether class and merits discovery should be bifurcated.

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other Issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):
7-Eleven requests that the Court hold a conference pursuant to CRC 3.762 to establish a schedule for class/employer discovery and class certification motion prior to permitting merits discovery.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (check one): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: July 17, 2007

Lindley P. Fraley

(TYPE OR PRINT NAME)

▶ Lindley P. Fraley
(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PROOF OF SERVICE*Kimberly Aleksick v. 7-Eleven, Inc., et al.*

STATE OF CALIFORNIA, COUNTY OF ORANGE

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Attorneys For PLAINTIFF
KIMBERLY ALEKSICK

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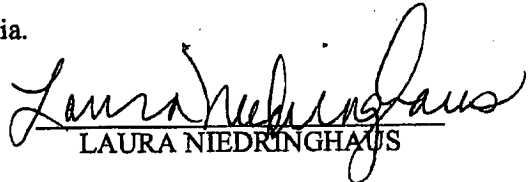
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Executed on July 17, 2007, at Irvine, California.


LAURA NIEDRINGHAUS

362342.1

EXHIBIT G

7/19
FILE COPY

1 William B. Sullivan [CSB No. 171637]
2 Eric J. Palmer [CSB No. 231207]
3 **SULLIVAN & CHRISTIANI, LLP**
4 2330 Third Avenue
5 San Diego, California 92101
6 (619) 702-6760 * (619) 702-6761 FAX

7 Attorneys for Plaintiff KIMBERLY ALEKSICK

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF IMPERIAL**

10 KIMBERLY ALEKSICK, individually and
11 on behalf of other members of the general
12 public similarly situated,

13 Plaintiff,

14 v.

15 7-ELEVEN, INC., a Texas Corporation;
16 MICHAEL TUCKER, an individual; and
17 DOES 1-50, Inclusive,

18 Defendants

CASE NO. ECU03615

(CLASS ACTION)

NOTICE OF PLAINTIFF'S COUNSEL'S
UNAVAILABILITY TO APPEAR AT THE
CASE MANAGEMENT CONFERENCE
AND REQUEST TO CONTINUE THE
CMC; [PROPOSED] ORDER GRANTING
PLAINTIFF'S REQUEST ATTACHED

19 TO THE COURT, ALL PARTIES HEREIN, AND THEIR ATTORNEYS OF RECORD:

20 PLEASE TAKE NOTICE that counsel for Plaintiff KIMBERLY ALEKSICK, William B. Sullivan,
21 will not be available to appear at the Case Management Conference scheduled for August 14, 2007;
22 8:30 a.m. in Dept. 9 of the above-entitled court, in regard to the above-captioned matter.

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19-Jul-2007 10:01 AM


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1 William Sullivan is scheduled to attend a wedding in New York that conflicts with the CMC
2 hearing. It is respectfully requested that the court continue the CMC to Thursday, August 23, 2007 at
3 8:30 a.m.

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5 Respectfully submitted,

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7 Dated: 7/19/07

SULLIVAN & CHRISTIANI, LLP

8 
9 William B. Sullivan,
10 Eric J. Palmer,
11 Attorneys for Plaintiff
12 KIMBERLY ALEKSICK
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19-Jul-2007 10:01 AM

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

KIMBERLY ALEKSICK, individually and
on behalf of other members of the general
public similarly situated,

Plaintiff,

v.

7-ELEVEN, INC., a Texas Corporation;
MICHAEL TUCKER, an individual; and
DOES 1-50, Inclusive,

Defendants

CASE NO. ECU03615

(CLASS ACTION)

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S REQUEST TO CONTINUE
THE CASE MANAGEMENT
CONFERENCE**

Dept. 9

Having considered Plaintiff's counsel's request to continue the Case Management Conference (CMC) in the above-captioned matter to Thursday, August 23, 2007 at 8:30 a.m., and good cause appearing therefore, the court grants Plaintiff's request to continue the CMC to Thursday, August 23, 2007 at 8:30 a.m.

IT IS HEREBY ORDERED

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10-01-2007 10:01 AM

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IT IS SO ORDERED

The Case Management Conference in this matter is continued to Thursday, August 23, 2007 at 8:30 a.m.

Dated: _____

Judge of the Superior Court
Dept. 9

19-Jul-2007 10:01 AM

5/6

SULLIVAN & CHRISTIANI, LLP

2330 Third Avenue

San Diego, California 92101

619-702-6760 fax 619-702-6761

KIMBERLY ALEKSICK vs. 7-ELEVEN, INC., et al.**IMPERIAL COUNTY SUPERIOR COURT****EL CENTRO COURTHOUSE****CASE NO. ECU03615**

Declaration of Service

CCP Sections 1013(a) and 2015.5

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to the within action. My business address is 2330 Third Avenue, San Diego, California 92101.

On July 19, 2007, I served the following documents described as follows: **NOTICE OF PLAINTIFF'S COUNSEL'S UNAVAILABILITY TO APPEAR AT THE CASE MANAGEMENT CONFERENCE AND REQUEST TO CONTINUE THE CMC; [PROPOSED] ORDER GRANTING PLAINTIFF'S REQUEST ATTACHED; [PROPOSED] ORDER GRANTING PLAINTIFF'S REQUEST TO CONTINUE THE CASE MANAGEMENT CONFERENCE**, in this action by placing true copies thereof as follows:

☒ [X] by placing ☐ [] the original ☒ [X] a true copy thereof as follows:

☐ [] BY MAIL

☐ [] I deposited such envelope in the mail at San Diego, California. The envelope was mailed thereon with postage thereon fully prepaid.

☐ [] As follows: I am "readily familiar" with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date for deposit for mailing in affidavit.

☒ [x] BY FACSIMILE TRANSMISSION. I transmitted said documents consisting of 6 (including this page) to the addressee(s) on the attached service list via facsimile. The transmission was reported as complete and without error.

☐ [] BY FEDERAL EXPRESS MAIL. I delivered said envelope to the Federal Express office located in San Diego, California to be delivered to the offices of the addressee...

☒ [X] (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 19, 2007, at San Diego, California.


Habib Hasbini

KIMBERLY ALEKSICK vs. 7-ELEVEN, INC., et al.
IMPERIAL COUNTY SUPERIOR COURT
EL CENTRO COURTHOUSE
CASE NO. ECU03615
SERVICE LIST

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Fax: (619) 239-0116
Attorney for Defendant
Michael Tucker

EXHIBIT H

ECS
LPE
E. Welter
Laura

7/19
7/23

A. Daniel Bacalski, Jr. (SBN 56488)
Paul C. Johnson, Jr. (SBN 189311)
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Attorneys for Defendant:
MICHAEL TUCKER

**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL - EL CENTRO**

| | | |
|-----------------------------|---|-----------------------------------|
| KIMBERLEY ALEKSICK, et al., |) | CASE NO. ECU 03615 |
| |) | |
| Plaintiffs, |) | ANSWER TO COMPLAINT BY |
| |) | DEFENDANT, MICHAEL TUCKER |
| v. |) | |
| |) | Judge: Hon. Christopher W. Yeager |
| 7-ELEVEN, INC., et al., |) | Dept.: 7 |
| |) | Comp. Filed: 4-16-07 |
| Defendants. |) | |
| |) | |

Defendant Michael Tucker answers the Complaint herein as follows:

GENERAL DENIAL

Pursuant to the provisions of Section 431.30 of the Code of Civil Procedure, this answering Defendant denies generally and specifically each and every allegation contained in the Complaint, and the whole thereof, and denies that Plaintiff sustained damages as alleged, or at all, by reason of any act, breach or omission on the part of this answering Defendant.

AFFIRMATIVE DEFENSES

I

(Failure to State a Cause of Action)

As a first separate and distinct affirmative defense, this answering Defendant alleges that the Complaint and the cause of action contained therein fail to state facts sufficient to constitute a cause of action against this answering Defendant.

Exhibit H, Page 64

1

ANSWER TO COMPLAINT BY DEFENDANT, MICHAEL TUCKER

1 **II**

2 **(Failure to Mitigate Damages)**

3 As a further, separate, and distinct affirmative defense, this answering Defendant alleges
4 that Plaintiff has failed to mitigate damages, and to the extent of this failure to mitigate, any
5 damages awarded to Plaintiff should be reduced accordingly.

6 **III**

7 **(Statute of Limitations)**

8 As a further, separate, and distinct affirmative defense, this answering Defendant alleges
9 that the Complaint and each cause of action alleged therein is barred by the applicable statute
10 of limitations, including but not limited to Code of Civil Procedure sections 338(a), 340(a),
11 340(b), 339, and 343; Labor Code section 203; and Business and Professions Code section
12 17208.

13 **IV**

14 **(Failure to Exhaust Administrative Remedies)**

15 As a further, separate, and distinct affirmative defense, this answering Defendant alleges
16 that the Complaint and each cause of action alleged therein is barred by Plaintiff's failure to
17 exhaust her administrative remedies.

18 **V**

19 **(Lack of Standing)**

20 As a further, separate and distinct affirmative defense, Defendant alleges that the
21 Plaintiff, as an uninjured private litigant, lacks standing under Business & Professions Code
22 section 17204 to bring this action as a representative plaintiff.

23 **VI**

24 **(Good Faith)**

25 As a further, separate and distinct affirmative defense, Defendant alleges that he at all
26 times acted in a good faith belief that he was in conformity with all applicable Labor Code and
27 regulatory requirements, Wage Orders, and policies and procedures of the Industrial Welfare
28 Commission, the Division of Labor Standards Enforcement, and the Labor Commissioner.

VII**(Taking Advantage of One's Own Wrong)**

As a further, separate and distinct affirmative defense to Plaintiff's Complaint, Defendant alleges that the Complaint and the purported causes of action are barred by the doctrine that no one can take advantage of one's own wrong.

VIII**(Improper Class Action)**

As a further, separate and distinct affirmative defense, Defendant alleges that the Complaint and the causes of action alleged therein are not suitable for treatment as a class action, because, among other reasons, (1) Plaintiff has not identified an ascertainable class, (2) Plaintiff is not a proper class representative, and (3) questions of law and fact affecting individual class members predominate over such questions common to the class.

IX**(Offset)**

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's damages, if any, must be offset by amounts due to Defendant from Plaintiff.

X**(Speculative Damages)**

As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's damages are uncertain and speculative, and therefore not recoverable herein.

XI**(No Punitive Damages)**

As a further, separate and distinct affirmative defense, Defendant alleges that punitive and/or exemplary damages are not available to Plaintiff under the causes of action alleged; and further alleges that even if such damages are available, Plaintiff is not entitled to such damages because Defendant acted at all times in good faith and without fraud, oppression, or malice.

///

///

1 XII

2 (Waiver)

3 As a further, separate and distinct affirmative defense, Defendant alleges that the
4 Complaint, and each cause of action therein, are barred because Plaintiff has waived the right
5 by her conduct and actions to assert each of the claims alleged therein.

6 XIII

7 (Estoppel)

8 As a further, separate and distinct affirmative defense, Defendant alleges that Plaintiff's
9 Complaint and each of the causes of action therein are barred because Plaintiff is estopped from
10 asserting each of the claims therein.

11 XIV

12 (Additional Defenses)

13 Defendant presently has insufficient knowledge or information upon which to form a
14 belief as to whether it may have additional, as yet unstated, affirmative defenses. Defendant
15 reserves the right to assert additional affirmative defenses in the event further investigation and
16 discovery indicate they would be appropriate.

17 WHEREFORE, Defendant prays judgment in its favor and against Plaintiff as follows:

18 (1) That Plaintiff take nothing by way of its Complaint and the same be dismissed
19 against Defendant;

20 (2) That in the event the Plaintiff recover judgment against Defendant, any liability
21 and damages required to be paid by Defendant be limited to the percentage of fault actually
22 attributed to Defendant;

23 (3) That Defendant be awarded his costs of suit incurred in this action; and,

24 (4) For such other further relief as the Court may deem just and proper.

25 Dated: July 19, 2007

BACALSKI, OTTOSON & DUBÉ, LLP

26 BY:

27 Paul C. Johnson, Jr.
28 Paul C. Johnson, Jr.
Attorneys for MICHAEL TUCKER

| | | | |
|---|--|---|-----------------------|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): A. Daniel Bacalski (SBN 56488) Paul C. Johnson, Jr. (SBN 189311) BACALSKI & OTTOSON, LLP 402 West Broadway, 24th Floor San Diego, CA 92112-0270 ATTORNEY FOR: Defendant, Michael Tucker | | TELEPHONE NO.: (619) 239-4340 (619) 239-0116 | COURT USE ONLY |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF IMPERIAL | | | |
| PLAINTIFF(S): KIMBERLY ALEKSICK | | | JUDGE: YEAGER |
| DEFENDANT(S): 7-ELEVEN, INC., et al. | | | DEPT.: 7 |
| | | | DATE: |
| | | | TIME: |
| PROOF OF SERVICE | | CASE NUMBER: ECU 03615 | |

I declare that: I am over the age of eighteen years and not a party to the case; I am employed in, or am a resident of, the County of San Diego, State of California, where the mailing occurs; and my business address is 402 West Broadway, 24th Floor, P.O. Box 120270, San Diego, California 92112-0270.

I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service; and that the correspondence shall be deposited with the United States Postal Service this same day in the ordinary course of business. I caused to be served the following document(s):

ANSWER TO COMPLAINT BY DEFENDANT, MICHAEL TUCKER

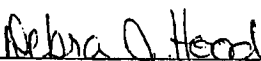
by placing a copy of each document in a separate envelope addressed to each addressee, respectively, as follows:

| | |
|--|---|
| Counsel for Plaintiff, KIMBERLY ALEKSICK: William B. Sullivan, Esq. SULLIVAN & CHRISTIANI, LLP 2330 Third Avenue San Diego, CA 92101 (619) 702-6760 Fax: (619) 702-6761 | Counsel for Defendant, 7-ELEVEN, INC.: Eric C. Sohlgren, Esq. Laurel E. Adcock, Esq. PAYNE & FEARS, LLP 4 Park Plaza Suite 1100 Irvine, CA 92614 (949) 851-1100 Fax: (949) 851-1212 |
| Co-Counsel for Defendant, 7-ELEVEN: Eric A. Welter, Esq. WELTER LAW FIRM, P.C. 720 Lynn Street, Suite "B" Herndon, VA 20170 (703) 435-8500 Fax: (703) 435-8851 | |

- ☒ **BY MAIL** by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with the firm's practice of collecting and processing documents for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day in a sealed envelope with postage thereon fully prepaid at San Diego, California in the ordinary course of a business day.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 19, 2007, at San Diego, California.


DEBRA J. HOOD